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CLERK US DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
BY DEPUTY AS

UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

UNITED STATES OF AMERICA, )  
                                )  
Plaintiff,                 )  
v.                            ) Civil Action No.: 1:14cv533  
                                )  
THE CITY OF AUSTIN,        )  
TEXAS,                      )  
                                )  
Defendant.                 )

**CONSENT DECREE**

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relief award the employee portions of all federal and state payroll taxes, including federal income taxes, Medicare and Social Security taxes, and any other applicable taxes. Such amounts shall be deducted from the Settlement Fund, and the City shall remit such amounts to the appropriate taxing authorities in accord with applicable law.

### **3. Preliminary Eligibility for Individual Relief**

- a. Claimants potentially eligible for relief under this Decree include all African-American and Hispanic applicants for the fire cadet position in 2012 who took the NFSI and either:
  - i. Were considered by the City to have failed the NFSI because they received a score of less than 70 but passed the I2;
  - ii. Were not permitted to proceed to the SOI because they received a score of less than 75.06 but passed the I2; or
  - iii. Passed the NFSI with a score of 75.06 or higher and passed the I2, but ranked below the last applicant appointed from the 2012 eligibility list.
- b. Potentially eligible Claimants as defined in this Paragraph who are hired through the Interim Hiring Process in Appendix B remain eligible to seek monetary relief and retroactive seniority. In order to be eligible for monetary relief under this Decree, a Claimant need not express an interest in, or be eligible for, a Priority Hire position or accept an offer of employment from the City.
- c. Within 30 days after the Date of Entry of this Decree, the City shall provide to the Claims

Administrator mailing addresses and email addresses of all potentially eligible Claimants.

Within 14 days following receipt of this information the Claims Administrator shall send each potentially eligible Claimant a copy of the Notice of Entry of Consent Decree and Interest-in-Relief Form attached to this Decree as Appendix D. Such notice shall be sent by e-mail and by certified U.S. mail, return receipt requested, to the addresses provided by the City.

- d. The Claims Administrator shall keep records of all notices sent pursuant to Paragraph 4.b. that are returned as undeliverable. Within 21 days of the mailing of the notices required by Paragraph 3.b, the Claims Administrator shall provide to the United States and the City a list of all delivered and undelivered notices, and a copy of all notices, envelopes and mail receipts for all persons to whom a notice was sent.
- e. The Claims Administrator will conduct a reasonable search for an alternative address for any potentially eligible Claimant whose notice was returned as undeliverable, then promptly re-mail the notice to the alternative address for that individual by certified U.S. mail, return receipt requested. If requested, the City shall provide to the Claims Administrator any information reasonably available to the City that may allow the Claims Administrator to locate an alternative address for any person whose notice was returned as undeliverable.

#### **4. Potentially Eligible Claimants to Submit Interest in Relief Form**

- a. Any Claimant who wishes to be considered for an award of individual relief under this Decree must return the completed Interest in Relief Form (Appendix D) to the Claims

Administrator no later than 75 days from the Date of Entry of this Decree. Any Claimant who fails to do so shall be deemed to have waived any right to be considered for an award of individual relief under this Decree, except for good cause as determined by the United States and approved by the Court if the City objects to the United States' determination.

- b. The date the Interest in Relief Form was mailed or otherwise delivered to the Claims Administrator shall be deemed the date of return of the Claimant's form. In the event an Interest-in-Relief Form is returned by U.S. mail, but no date of mailing is indicated by a postmark of the United States Postal Service, or if the postmark is illegible, the date of return of the Interest in Relief Form shall be deemed to be five days prior to the date the form was received by the Claims Administrator.
- c. As soon as practicable upon receipt of an Interest in Relief Form, the Claims Administrator will forward copies of each returned Interest in Relief Form to the United States and to the City via electronic mail, to addresses to be specified by the Parties.

## **5. Priority Hiring Relief and Retroactive Seniority**

The Decree contemplates a process in which the United States creates a list of those preliminarily eligible for priority hire. The Court will then approve a final Priority Hire Candidate List following the fairness hearing on individual relief. The individuals on that approved list will be eligible to participate in the process described in Appendix E, and based on that process, the City will create the Priority Hire List.

- a. All Claimants who (i) submit a timely Interest in Relief form under Paragraph 4, above, and (ii) indicate affirmatively an interest in a Priority Hire position on their Interest in Relief form, shall be included in the process for determining Priority Hires described in this Paragraph.
- b. Following the fairness hearing on individual relief described in Paragraph III.F.8 below, and the administration of the new lawful selection procedure developed under the Decree, the City shall create Priority Hire Lists of qualified candidates following the procedures in Appendix E. The names and scores of Claimants on the Priority Hire Lists shall remain confidential between the Parties and shall not be disclosed except by order of the Court, or as otherwise required by law.
- c. The City shall provide each Priority Hire List created under Appendix E to the United States within five business days after it is created. The United States may object to any Claimant on a Priority Hire List by providing written notice of such objection to the City within 10 business days of its receipt of the Priority Hire List. The United States and the City shall meet and confer in good faith to resolve any objections made by the United States. If the Parties are unable to resolve any objection(s), either Party may submit the issue to the Court for determination. The Court will find that any objection by the United States to a Claimant on a Priority Hire List is well-founded only if the United States establishes that the presence or position of the Claimant on the Priority Hire List did not comply with the selection process established in this Decree.
- d. Upon completion of the objection process described in Subparagraph c, above, the City shall designate 30 fire cadet job positions as Priority Hire positions. These Priority Hire

positions shall be allocated as follows: twelve (12) shall be filled by Claimants from the approved African-American Priority Hire List; and eighteen (18) shall be filled by Claimants from the approved Hispanic Priority Hire List.

- e. The City shall offer employment as a fire cadet in the first cadet academy starting after completion of the selection process in Subparagraph c, above, to the Claimants in the highest six (6) places on the African American Priority Hire List, and the Claimants in the highest nine (9) places on the Hispanic Priority Hire List.
- f. The City shall offer employment as a fire cadet in the second cadet academy starting after completion of the selection process in Subparagraph c, above, to the Claimants in the remaining highest six (6) places on the African American Priority Hire List, and the Claimants in the remaining highest nine (9) places on the Hispanic Priority Hire List.
- g. The City shall make offers of employment to Claimants on the Priority Hire Lists in writing by e-mail with tracking capability to each Claimant's last known e-mail address and by certified U.S. mail (return receipt requested). The offer of employment shall prominently indicate:
  - i. That the offer is a Priority Hire offer made pursuant to this Decree;
  - ii. That upon the successful completion of the fire cadet academy and commissioning as an Austin firefighter, the Claimant will be entitled to Retroactive Seniority as provided by this Decree;

- iii. The beginning salary and the benefits the Claimant will receive if the offer is accepted, as well as the salary and benefits the Claimant will be eligible to receive after successful completion of the fire cadet training academy;
  - iv. The date on which the Claimant will begin the fire cadet academy if the offer is accepted;
  - v. The respective telephone numbers and names at which the Claimant may contact the United States and the City with any questions regarding the Priority Hire offer; and
  - vi. That the Claimant has at least 15 days from the date on which the written offer of employment was sent to notify the City in writing whether the Claimant accepts the offer. Failure to do so shall constitute rejection of the offer and shall disqualify the Claimant from further eligibility for a Priority Hire.
- h. Each Claimant who accepts an employment offer under Paragraph 5 shall be deemed a Priority Hire for purposes of meeting the City's obligation under Subparagraph d, above. Acceptance of an employment offer under Paragraph 5, above, shall constitute an automatic withdrawal by the Claimant from any other Austin Fire Department hiring process in which the Claimant may be an active candidate at that time.
- i. The City shall notify the United States within seven days of any rejection by a Claimant of a Priority Hire offer of employment, and shall provide the United States with a copy of any written rejection from the Claimant.

- j. In the event a Claimant rejects a Priority Hire offer of employment, or begins employment as a fire cadet but subsequently resigns, dies, or is involuntarily terminated from employment prior to the date the Claimant is commissioned as an Austin firefighter, the City shall make a Priority Hire offer of employment to the highest remaining Claimant from the same Priority Hire List for a position in the next fire cadet academy. If that occurs, the Claimant accepting the employment offer shall be counted in place of the first Claimant for purposes of the meeting the City's priority hiring obligation in Subparagraph d, above.
- k. On the date a Priority Hire is commissioned as a probationary firefighter following successful completion of the fire cadet academy, the City shall credit the Priority Hire with Retroactive Seniority as provided in Appendix A in the City's personnel and payroll records.

## **6. Determination of Claimants' Eligibility for Individual Relief**

- a. The United States, with the assistance of the Claims Administrator, shall determine each Claimant's Backpay share of the Settlement Fund such that the shares are distributed pro rata among all eligible and interested Claimants. The United States and the City, with the assistance of the Claims Administrator, shall determine the Claimants eligible to participate in the Priority Hire selection process under Appendix E.
- b. No later than 105 days after the Date of Entry of this Decree, the United States shall provide the City with: (i) a preliminary Backpay Awards List that identifies all Claimants it finds potentially eligible for Backpay relief based on the Interest in Relief forms

received by the Claims Administrator, and (ii) a preliminary Priority Hire Candidate List that identifies all Claimants it finds eligible to participate in the Priority Hire selection process under Appendix E based on the Interest in Relief forms received by the Claims Administrator. If the United States determines that a Claimant who sought Backpay and/or Priority Hire relief is not eligible for such relief, the submissions under this subparagraph shall include the reason(s) for that determination.

- c. No later than 135 days after the Date of Entry of this Decree, the City shall notify the United States in writing if it objects to any of the United States' determinations regarding preliminary eligibility for Backpay and/or Priority Hire relief. To the extent that the parties are unable to resolve the City's objections informally, such resolution shall be subject to the dispute resolution procedures in Part IV of this Decree.

## **7. Filing of Individual Relief Lists**

No later than 180 days after the Date of Entry of the Decree, the United States shall file under seal with the Court and serve upon the City: (i) the preliminary Backpay Awards List stating, for each Claimant who timely returned an Interest in Relief form, the share of the Settlement Fund that the United States has determined should be awarded to the Claimant; and (ii) the preliminary Priority Hire Candidate List with individuals listed in alphabetical order by last name. The City shall have a right to respond to unresolved objections to the United States' determinations.